IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMARY SUIT NO.2061 OF 1982

Vandana Enterprises .. Plaintiff

vs

Automobile Production India Ltd.. Defendant

Ms.S.V.Sonawane for Plaintiff

Mr.Tushar Bhavsar i.b Crawford Bayley & Co.for Defendant

CORAM : A.M.KHANWILKAR, J

DATE : 15th March, 2007

P.C.

1. This suit for recovery of a sum of Rs.3,05,089.70 with further interest on the principal sum of Rs.2,30,780.77 at the rate of 18 % p.a. from the date of filing of the suit till judgment and thereafter at such rate as may be awarded by the Court until realisation of the amount and for costs of the suit,has been filed on the basis of 11 hundis issued in favour of the plaintiffs between 31st February, 1980 till 13th November, 1980. Before institution of the suit the plaintiff filed a Company Petition before this Court claiming an amount of Rs.4,32,003.97 along with interest being Rs.13,532/-. In the Company Petition, total claim of Rs,.4,63,535.97 was set up against the defendants. In the said Company Petition, pursuant to an order of the Court, the

defendants deposited an aggragate amount of Rs.2,99,259.20 in two instalments. The first instalment was deposited before 14th October, 1981 in the sum of Rs.1,99,295.20 and the second instalment before 18th November,1981 in the sum of Rs.1,00,000/-. The plaintiffs were further permitted to withdraw the entire amount deposited by way of first instalment in the sum of Rs.1,99,259.20. However, out of the second instalment deposited by the defendants, the plaintiffs were allowed to withdraw only a sum of Rs.5868.00. In other words, by order dated 12th October, 1981, this court permitted the plaintiffs to withdraw total sum of Rs.2,05,127.20 only. Remainder amount was ordered to be transferred to the proposed suit account of the suit to be instituted by the plaintiffs for recovery of balance principal amount of Rs.2,33,003.97.

2. In this background the present suit has been filed by the plaintiffs is for the recovery of the principal amount of Rs.2,30,780.77. In the particulars of claim, the plaintiffs have claimed interest at the rate of 18 % p.a. on the principal amount which has been shown as Rs.74,308.93. On that basis, by way of final reliefs, it is prayed by the plaintiffs that a judgment and decree against the defendants in the sum of Rs.3,05,089.70 be granted with further interest on the principal amount of Rs.2,30,780.77 at the rate of 18 % p.a.

3. It is not in dispute that no written statement has been filed by the defendants in the present suit. The plaintiffs have produced an affidavit in lieu of the examination in chief and also the relevant documents to support their claim for recovery of the principal amount of Rs,2,30,780.77.

4. Counsel for the defendants in all fairness submits that in so far as the claim of the plaintiffs for the recovery of principal amount of Rs.2,30,780.77 is concerned, that cannot be contested and the plaintiffs will be entitled for the said relief. However, the contest is only in relation to the grant of interest at the rate of 18 % p.a. as claimed by the plaintiffs. According to the defendants, in law, the plaintiffs are not entitled for that relief. It is submitted on behalf of the defendants that as the suit is founded on the hundis issued between the parties and that the document makes no reference or specify any rate of interest for the delayed payment, in such a case, the plaintiffs would become entitled for interest only in terms of section 80 of the Negotiable Instrument Act, 1881. It is submitted that in the present case, the unamended provisions of section 80 of that Act will come into play interms whereof the plaintiffs will be entitled to claim maximum 6 % p.a. by way of interest on the principal amount till the institution of the suit.

It is submitted that even with regard to the interest to be awarded during pendency of the suit and after the date of judgment and decree, the Court will be obliged to invoke the provisions of section 34 of C.P.C. Even that provision specifies maximum rate of interest at 6 % p.a. Counsel for the defendants therefore, submits that assuming that the principal amount became due and payable with effect and from 29th June, 1980, the plaintiffs would be entitled to interest on that amount from that date at the rate of 6 % p.a. only.

5. Counsel for the plaintiffs on the other hand would submit that the plaintiffs would be entitled to 18 % interest p.a. on the principal amount. In view of the statutory provision, it is not possible to countenance this submission. I find substance in the arguments of the defendants that the plaintiffs will succeed in regard to claim for interest on the principal amount only at the rate specified by the unamended section 80 of the Negotiable Instrument Act, which is 6 % p.a. only. This is so because the hundis which are pressed into service do not specify the rate of interest payable for the delayed payment. In such a case, by virtue of section 80 as applicable at the relevant time, the plaintiffs would be entitled for interest only at 6 % p.a. from 29th June, 1980 onwards till institution of the suit i.e. 9th

February, 1982. From 9th February, 1981 till the judgment and decree which is the time spent for pendency of the proceedings in this Court, the plaintiffs will be entitled for the interest again at the rate of 6 % p.a. in terms of section 34 of C.P.C. The plaintiffs would also be entitled for interest at the rate of 6 % interest p.a. from the date of judgment and decree till realisation of the amount in terms of section 34 of C.P.C.

6. The next question that needs to be addressed is whether the defendants will have to pay interest component disregarding the amount which is already deposited in this Court by the defendants in Company petition which was then transferred to the suit account and later on invested pursuant to the directions of the Court. In my opinion, the defendants are entitled to claim adjustment from the said amount. If the decretal amount payable by the defendants exceeds the maturity amount of the investment made in terms of the order of the Court (i.e original sum of Rs.94,132/- which stood transferred to the suit a/c along with accrued interest thereon)in that event, the defendants would be liable to pay the differential amount. However, if the decretal amount is less than the maturity amount of the said deposit and the accrued interest thereon; in that case, the plaintiffs will be free to forthwith withdraw the decretal amount so as to satisfy the decree passed by this

Court and the surplus amount will have to be made over to the defendant.

7. Accordingly, suit is partly decreed on the following terms :

The defendants do pay principal sum of Rs.2,30,780.77 to the plaintiffs along with interest at the rate of 6 % p.a. on and from 29th June, 1980 till realisation thereof.

The plaintiffs are entitled to costs of the suit quantified at Rs.25,000/-.

(A.M.Khanwilkar, J)